

Message Text

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C O N F I D E N T I A L PORT AU PRINCE 1620

E.O. 11652: GDS

TAGS: EINV, HA

SUBJECT: OTHER FACTORS INFLUENCING PROSPECTS FOR RESOLUTION OF
DISPUTE BETWEEN GOH AND DUPONT CARIBBEAN INC.

REFS: (A) STATE 173855; (B) PAUP 1601; (C) PAUP 1602

1. SUMMARY. IN ASSESSING THE MERITS OF THE DUPONT CARIBBEAN CLAIM AGAINST THE GOH, CONSIDERATION MUST ALSO BE GIVEN TO FACTORS WHICH DO NOT APPEAR ON THE PUBLIC RECORD--THE CIRCUMSTANCES OF THE CONTRACT'S NEGOTIATION, HAITIAN JUDGEMENTS ON PIERSON'S CONDUCT, PIERSON'S PUBLIC ATTITUDES TOWARD GOH, THE REMOVAL OF CAMBRONNE, ONE OF THE CONTRACT'S CHIEF NEGOTIATORS, IN NOVEMBER 1972, AND THE INTENSIFYING STRUGGLE FOR CONTROL BETWEEN DCI AND TRANSLINEAR. ALTHOUGH GOH IS NOT BLAMELESS FOR THE FAILURE OF THE PROJECT AND THE PRESENT IMPASSE, SUCH FACTORS--ADDED TO THE CONVICTION THAT IT HAS PROCEEDED LEGALLY THROUGHOUT ON THE BASIS OF SOLID EVIDENCE OF PIERSON'S NON-PERFORMANCE--MAKE IT UNLIKELY THAT GOH WILL BACK DOWN FROM ITS POSITION AND THAT AN AMICABLE SOLUTION CAN BE FOUND. END SUMMARY.

2. IN REFTELS THE EMBASSY HAS ASSESSED THE PROCEDURAL AND SUBSTANTIVE MERITS OF PIERSON'S COMPLAINTS AGAINST GOVT AND HAS GIVEN ITS VIEW THAT THESE COMPLAINTS ARE NOT RPT NOT SUFFICIENT TO WARRANT A FINDING THAT THE GOH ACTED ARBITRARILY OR WITHOUT CAUSE.

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3. BEYOND THIS QUESTION, HOWEVER, IS ANOTHER--WHAT PROSPECT IS THERE THAT NOW, AFTER ALL LEGAL RESORT IN HAITI HAS BEEN EXHAUSTED, THE GOVT WOULD REINSTATE THE CONTRACT AS PIERSON DEMANDS OR WOULD RESUME SERIOUS TALKS WITH HIM LOOKING TO A SETTLEMENT? IN SEEKING TO ANSWER THIS QUESTION, THE FOLLOWING FACTORS, NOT LEGAL SO MUCH AS POLITICAL AND PSYCHOLOGICAL, SHOULD BE BORNE IN MIND:

4. DR. DUVALIER'S HEALTH AT SIGNATURE OF CONTRACT. IN HIS FINAL YEARS DR. DUVALIER HAD DIABETIC COMAS OF VARYING DURATION AND SEVERITY WHICH IMPAIRED HIS JUDGMENT AND LED TO QUESTIONABLE DECISIONS IN A NUMBER OF FIELDS. FOR HIM TO HAVE AGREED TO CEDE TO THE ICJ HAITI'S JURISDICTION IN CONTRACT DISPUTES AFFECTING THE DEVELOPMENT OF ILE DE LA TORTUE WAS AN UNCHARACTERISTIC DEPARTURE FROM HIS BRAND OF NATIONALISM AS WELL AS AN UNWORKABLE PROVISION. GOVERNMENT EFFORTS TO PROTECT HAITI'S RIGHTS WHEN THE CONTRACT WAS RENEGOTIATED IN NOVEMBER 1971 DID NOT RESULT IN THE ELIMINATION OF THIS CLAUSE, FOR EXAMPLE, OR IN CHANGING THE PREDOMINANCE OF THE THREE DCI-NOMINATED DIRECTORS ON THE FIVE MAN BOARD. IN RETROSPECT, THE GOVT SHOULD HAVE SATISFIED ITSELF ON SUCH POINTS AT THAT TIME BEFORE AGREEING TO PROCEED WITH PIERSON AT ALL. IN ANY EVENT, THE FEELING PERSISTS HERE THAT PIERSON TOOK UNFAIR ADVANTAGE OF DR. DUVALIER AND IS CLINGING TO THIS ADVANTAGE IN A MANNER UNBECOMING TO ONE WHO CLAIMS TO BE A DEVOTED FRIEND OF HAITI.

5. THE CAMBRONNE CONNECTION. RIGHTLY OR WRONGLY, BOTH THE GENERAL PUBLIC AND HAITIAN OFFICIALDOM LINKED THE DCI CONTRACT TO CAMBRONNE. THUS, SINCE CAMBRONNE'S OUSTER IN NOVEMBER 1972 THE DCI CONTRACT, LIKE THE HEMO CARIBBEAN CONTRACT, HAS BECOME A SYMBOL OF CORRUPTION, AND OF THE SALE OF HAITIAN PATRIMONY. THIS ATTITUDE NOT ONLY DISCOURAGED HAITIAN OFFICIALDOM FROM TAKING THE INITIATIVE TO PUSH FOR MEETINGS OF THE FREE PORT AUTHORITY BOARD DURING THE LAST MONTHS OF THE CONTRACT'S VALIDITY, BUT WOULD BE A CURRENT FACTOR IN GOH CONSIDERATION OF ANY PROPOSAL THAT TALKS WITH PIERSON BE RESUMED.

6. THE PATTERN OF PIERSON'S BEHAVIOR AS SEEN BY GOH. THE GOVT, EXAMINING THE 1972 PERFORMANCE OF DCI, CAME INCREASINGLY TO SUSPECT PIERSON'S GOOD FAITH, NOTING HIS EFFORTS TO PROMOTE THE DEVELOPMENT WHILE MINIMIZING HIS OWN INVESTMENT OR DIVERTING PROFITS TO OTHERS, HIS CONTENTIOUS RELATIONS WITH

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TRANSLINEAR (WHICH WAS DOING THE ACTUAL CONSTRUCTION WORK ON THE ISLAND), HIS PENCHANT FOR PUBLICITY BEFORE RESULTS WARRANTED, AND HIS UNBUSINESSLIKE APPROACH TO SETTING UP THE AUTHORITY (SEE PARAS 10, 11 REFTEL B). THE GOVT EVIDENTLY CONCLUDED THEY WERE DEALING WITH A MUNTEBANK, AND NOTHING PIERSON HAS SINCE DONE APPEARS TO HAVE SOFTENED THIS VIEW. FOR EXAMPLE, HIS INNUMERABLE PUBLIC STATEMENTS AND CABLES SENT TO GOVERNMENT OFFICIALS IN PORT AU PRINCE RECURRENTLY HINT OF BLACKMAIL UNLESS THE GOVT

CAPITULATES TO HIS VIEWPOINT. EVEN IF THE GOVT HAD BEEN MORE AT FAULT THAN IT WAS AND PIERSON LESS, SUCH TACTICS WOULD BE BOUND TO PROVOKE A REACTION OF EXTREME DISCONTENT ON THE PART OF ANY SOVEREIGN GOVERNMENT. ALSO A FACTOR IN THE GOVT'S REACTION TO PIERSON IS THE BITTER MEMORY OF PAST CONTRACTS IN WHICH UNSCRUPULOUS AMERICANS HAVE GULLED THE HAITIANS, EXPLOITING THEIR LACK OF SOPHISTICATION OR THEIR RELATIVELY WEAK BARGAINING POSITION. TODAY HAITI'S GOVERNMENT IS IN NO MOOD TO BE RAGOONED BY A MAN THEY VIEW AS A DECLARED ENEMY.

7. THE DIFFICULTY OF DEALING WITH PIERSON. IN RESPONSE TO PIERSON'S APPROACHES TO AMBASSADOR BOUCHETTE IN EARLY 1974, THE GOH AGREED TO HEAR HIM OUT ONCE AGAIN AND ON MARCH 26 MINISTERS JEANTY AND FOURCAND HAD EXTENDED SESSION WITH PIERSON AND HIS LAWYER, POINTING OUT AMONG OTHER THINGS THAT THE TWO CLAUSES (ARTICLES 6 AND 9) WERE UNCONSTITUTIONAL AND HENCE UNACCEPTABLE. WE DO NOT HAVE THE RECORD OF THAT CONVERSATION BUT IT APPEARS THAT PIERSON CHOSE TO INTERPRET THE MINISTERS AS ACCEPTING HIS POSITION WHILE THEY INSISTED THEY COULD NOT NEGOTIATE AND WOULD MERELY REPORT TO THE PRESIDENT. IN ANY CASE, PIERSON'S TACTICS THEN AND THEREAFTER APPEAR TO HAVE PROVIDED THE FINAL EVIDENCE THAT NO REASONABLE COMPROMISE COULD BE WORKED OUT WITH HIM.

8. POLITICAL IMPLICATIONS OF GOH CONCESSION UNDER PRESENT CIRCUMSTANCES. IN VIEW OF GOH, THE HAITIAN LEGAL SYSTEM HAS DONE ITS WORK, LAWS AND PROCEDURES HAVE BEEN FOLLOWED, JUDGMENT IN THE SEVERAL INSTANCES HAS BEEN RENDERED. AS BRUTUS MADE CLEAR TO THE AMBASSADOR RECENTLY, FOR THE GOVERNMENT TO RESUME BARGAINING WITH PIERSON, ON NOTHING MORE THAN HIS THREATS, WOULD BE TANTAMOUNT TO REPUDIATING ITS OWN LEGAL PROCESSES AND GIVING WEIGHT TO CHARGES BY PIERSON AND OTHERS THAT HAITIAN JUSTICE IS A FRAUD. THIS IS AN UNDERLYING POLITICAL FACT OF LIFE IN THE CASE. PIERSON'S CHARGES AT THE SENATE APPROPRIATIONS SUBCOMMITTEE HEARINGS AS TO HAITI'S CONFIDENTIAL

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ALLEGED DICTATORIAL NON-OBSERVANCE OF JUSTICE CAN ONLY STRENGTHEN GOH REFUSAL TO DEAL WITH HIM ON HIS TERMS.

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